IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICGTION

INCOME TAX REFERENCE NO. 278 of 1999

Raju Auto Ltd. ... Applicant.

vs.

The Commissioner of Income Tax ... Respondent

Ms. V. B. Patel, for Applicant.
Mr. Ashok Kotangale, Sr. Counsel
with Mr. D.A. Dubey for Respondent.

CORAM: V**. C. DAGA**

AND

A. S. AGUIAR JJ.

Date:August 5, 2005.

P. C.:

1. By this reference under section 256(1) of the Income-tax Act the Tribunal has referred the following question of law for opinion at the instance of the Revenue:

(1) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the proportionate salary paid to the Managing Director for the period of his stay abroad was not to be excluded for the purpose of computing the disallowance under sec. 40(c) read with sec. 40A (5)(b)(i) of the Income Tax Act , 1961?

2. Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in justified in

holding the guarantee commission paid by the assessee was in the nature of capital expenditure placing reliance on the decision of the Gujarat High Court reported in 137 ITR 389 regarding earlier orders of the Tribunal passed in assessee's own case.

3. Counsel for both the sides fairly agree that the above two questions are covered by two different judgment of this court. They submit that so far as first question is concerned it is covered by the judgment of this court in the case of **Colour Chem Limited vs. Commissioner of Income Tax,** reported in [1999] 238 ITR 171. So far as the second question is concerned according to both the counsel the same is covered by another judgment of this court in the case of **Kinetic Engineering Ltd. Vs. Commissioner of Income Tax,** reported in [1998] 233 ITR 762.

4. In this view of the matter both questions are answered in the negative, i.e. in favour of the assessee and against the Revenue. Reference stands disposed of with no order as to costs.

(V. C. DAGA J.)

(A. S. AGUIAR J.)